

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA  
ELKINS**

**COYT BRYANT,**

Petitioner,

**v.**

**CIVIL ACTION NO. 2:12-CV-69  
(Judge Bailey)**

**TERRY O'BRIEN,  
JOHN HOWARD BENNETT,**

Respondents.

**ORDER ADOPTING REPORT AND RECOMMENDATION**

On this day, the above-styled matter came before the Court for consideration of the Report and Recommendation of United States Magistrate Judge John S. Kaull. By Local Rule, this action was referred to Magistrate Judge Kaull for submission of a proposed report and a recommendation ("R&R"). Magistrate Judge Kaull filed his R&R on November 14, 2012 [Doc. 12]. In that filing, the magistrate judge recommended that this Court dismiss without prejudice the petitioner's Application Under 28 U.S.C. § 2241 for Writ of Habeas Corpus [Doc. 1].

Pursuant to 28 U.S.C. § 636 (b)(1)(C), this Court is required to make a *de novo* review of those portions of the magistrate judge's findings to which objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. ***Thomas v. Arn***, 474 U.S. 140,

150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); **Snyder v. Ridenour**, 889 F.2d 1363, 1366 (4th Cir. 1989); **United States v. Schronce**, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge Kaul's R&R were due within fourteen (14) days of receipt, pursuant to 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b). The docket sheet reflects that service was accepted on November 16, 2012 [Doc. 13]. In response, the petitioner submitted a letter, dated November 16, 2012 and directed to the Clerk of Court, asking to "file . . . the Recommendation Dismissing Without Prejudice 2241(c)(3) writ of habeas corpus . . . with [the] 4th Circuit [Court] of Appeals" [Doc. 14]. As the letter contains no substantive objections to the R&R, the findings and recommendation will be upheld unless they are "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A).

Upon careful review of the report and recommendation, it is the opinion of this Court that the magistrate judge's Report and Recommendation [**Doc. 12**] should be, and is, hereby **ORDERED ADOPTED** for the reasons more fully stated in the magistrate judge's report. As such, this Court hereby **DENIES and DISMISSES** the petitioner's Writ of Habeas Corpus [**Doc. 1**]. Therefore, this matter is hereby **ORDERED STRICKEN** from the active docket of this Court. The Clerk is directed to enter a separate judgment in favor of the respondent.

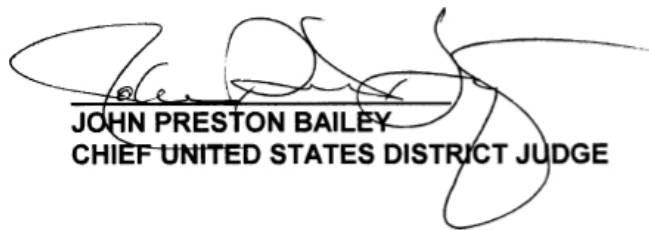
As a final matter, although the petitioner has waived his right to appeal this Order, this Court finds that the petitioner has not made the requisite "substantial showing of the denial of a constitutional right " for a certificate of appealability; accordingly, this Court

hereby **DENIES** a certificate of appealability to the extent that the petitioner might seek one from this Court. See 28 U.S.C. § 2253(c)(2).

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to any counsel of record and to mail a copy to the *pro se* petitioner.

**DATED:** December 5, 2012.



JOHN PRESTON BAILEY  
CHIEF UNITED STATES DISTRICT JUDGE